

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JOSE PAGAN,

Plaintiff,

vs.

**9:18-CV-1094
(TJM/DJS)**

**DONALD VENETTOZZI, Director of Special Housing
Units (DOCCS), Individually and in their Official
Capacity, WILLIAM CARDONE, Disciplinary Hearing
Officer at Wallkill Correctional Facility, Individually
and in their Official Capacity, and W. PURDY,
Lieutenant at Wallkill Correctional Facility,
Individually and in their Official Capacity**

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this *pro se* prisoner civil rights action to Magistrate Judge Daniel J. Stewart for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff alleges that the Defendants violated his due process rights in a disciplinary hearing at Wallkill Correctional Facility in Wallkill, New York.

Magistrate Judge Stewart's Report-Recommendation, dkt. # 35, issued on December 6, 2019, recommends that Defendants' motion to dismiss for failure to state a claim be granted in part and denied in part. Magistrate Judge Stewart finds that Plaintiff's Complaint survives Defendants' allegations that his claims are barred by collateral

estoppel, and that he has stated a claim that Defendants violated his due process rights by failing to permit him to call witnesses, interview other witnesses, and examine evidence. Magistrate Judge Stewart also finds that Defendant has sufficiently alleged personal involvement of Defendant Venettozzi. Because Plaintiff is no longer housed at Walkill Correctional Facility, however, the Magistrate Judge also finds that Plaintiff's claims for declaratory relief against Defendants Cardone and Purdy should be dismissed.

No party objected to the Report-Recommendation, and the time for such objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

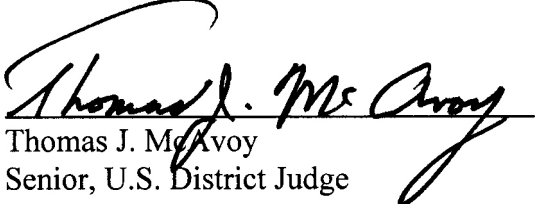
Accordingly,

The Report-Recommendation of Magistrate Judge Stewart, dkt. # 35, is hereby **ACCEPTED** and **ADOPTED**. Defendant's motion to dismiss, dkt. # 32, is hereby **GRANTED IN PART** and **DENIED IN PART**, as follows:

1. The motion is granted with respect to Plaintiff's claims for declaratory relief against Defendants Cardone and Purdy; and
2. The motion is denied in all other respects.

IT IS SO ORDERED.

Dated: January 15, 2020


Thomas J. McAvoy
Senior, U.S. District Judge